

MAYNARD J. BONESTEEL

IBLA 84-187

Decided August 23, 1984

Appeal from decision of the Colorado State Office, Bureau of Land Management, denying petition for reinstatement of oil and gas lease W-51679 Acq. under 30 U.S.C. § 188(c) (1982) and setting forth conditions for reinstatement under 30 U.S.C. § 188(d) (1982).

Affirmed.

1. Oil and Gas Leases: Reinstatement -- Oil and Gas Leases: Rentals --
Oil and Gas Leases: Termination

An oil and gas lease on which there is no well capable of producing oil or gas in paying quantities automatically terminates by operation of law if the lessee fails to pay the annual rental on or before the anniversary date of the lease. 30 U.S.C. § 188(b) (1982). Under 30 U.S.C. § 188(c) (1982), the Department of the interior has no authority to reinstate a terminated oil and gas lease where the rental payment is not tendered at the proper office within 20 days after the due date.

2. Oil and Gas Leases: Reinstatement -- Oil and Gas Leases:
Termination

Reinstatement of a terminated noncompetitive oil and gas lease under sec. 401 of the Federal Oil and Gas Royalty Management Act of 1982, 30 U.S.C. § 188(d), (e) (1982), requires payment by the lessee of rental at the rate of \$5 per acre as well as reimbursement of administrative costs (up to \$500) and the cost of publishing notice in the Federal Register.

APPEARANCES: Maynard J. Bonesteel, pro se.

OPINION BY ADMINISTRATIVE JUDGE GRANT

Maynard J. Bonesteel appeals from a decision of the Colorado State Office, Bureau of Land Management (BLM), dated November 22, 1983. The decision held that oil and gas lease W-51679 terminated because the annual rental was not paid by the anniversary date of the lease, September 1, 1983. The decision further held that appellant's lease was not subject to reinstatement under provisions of 30 U.S.C. § 188(c) (1982) for failure to tender

the rental payment within 20 days of the anniversary date. Further, the decision stated certain conditions precedent to consideration of the lease for reinstatement under the terms of 30 U.S.C. § 188(d), (e) (1982).

Noncompetitive oil and gas lease W-51679 was issued effective September 1, 1975, to Maynard J. Bonesteel for certain acquired lands in Coffee County, Kansas. The lease required an annual advance rental payment in the amount of \$32. Although no payment of the annual rental for the lease year commencing September 1, 1983, was received by the September 1 anniversary date, a payment in the amount of \$47 was received by the Colorado State Office, BLM, on November 10, 1983, together with a request for reinstatement of the lease.

In his petition for reinstatement, appellant explained that he had always depended upon receiving a notice of rental due from BLM. Petitioner said he did not know the rental was due on September 1, 1983. Further, he stated that the enclosed check for \$47 was "to cover one years rental and the \$25.00 reinstatement fee."

On November 22, 1983, BLM issued its decision notifying appellant that his lease had terminated. BLM stated that the rental was due September 1, 1983, but that appellant's rental was not received until November 10, 1983. BLM noted that the rental was deficient in the amount of \$10, 1 year's rental being \$32. BLM held that it is without authority to reinstate the lease under 30 U.S.C. § 188(c) (1982) as the required rental had not been received within the 20-day limit imposed by the regulations.

BLM informed appellant that his petition for reinstatement filed November 10, 1983, was being considered under P.L. 97-451, 1/ which required satisfaction of additional conditions by the lessee within 60 days from receipt of BLM's decision. These additional conditions were described as follows by BLM:

1. Lessee agrees to new lease terms by executing and returning the enclosed revisions of lease terms increasing rental and royalty rates.
 - a. Lease W-51679 Acq. contains 63.52 acres for which the rental will be \$320.00. You have paid \$22.00, therefore, a balance of \$298.00 is due.
2. Lessee submits a nonrefundable reinstatement fee of \$500.00.
3. Lessee submits \$68.00 for the cost of publishing a notice of proposed reinstatement in the Federal Register.

1/ Section 401 of P.L. 97-451, 96 Stat. 2462 (1983) (codified at 30 U.S.C. § 188(d), (e) (1982)), authorizes reinstatement subject to certain conditions where rental is not tendered within 20 days of the anniversary date.

By letter of November 27, 1983, appellant requested that BLM accept his rental payment since he had not received the usual notice. Appellant protested the stringent requirements for reinstatement stating that he had previously been told by BLM to send \$32 for the rental and a \$25 reinstatement fee. Appellant requested reinstatement of the lease with its original terms.

Realizing that appellant had not understood the requirements specified in its decision, the record reflects that Barbara J. Benz, BLM, telephoned appellant on December 6, 1983, to explain the requirements. Thereafter, appellant sent his notice of appeal accompanied by payment in the amount of \$10 to cover the rental deficiency. In a letter to BLM dated December 12, 1983, and in his statement of reasons on appeal, appellant essentially repeats the same contentions set forth in his petition for reinstatement and his earlier letter.

[1] Section 31(b) of the Mineral Leasing Act, as amended, 30 U.S.C. § 188(b) (1982), provides that upon failure of a lessee to pay rental on or before the anniversary date of a lease on which there is no well capable of production of oil or gas in paying quantities, the lease terminates automatically by operation of law. See 43 CFR 3108.2-1(a). We accordingly find that appellant's lease terminated by operation of law for nonpayment of rental. Under 30 U.S.C. § 188(c) (1982), a terminated oil and gas lease may be reinstated where the rental is paid within 20 days after the date of termination upon a showing by the lessee that the failure to pay on or before the anniversary date was either justifiable or not due to a lack of reasonable diligence. Harriet C. Shaftel, 79 IBLA 228, 230 (1984); Vernon I. Berg, 72 IBLA 211 (1983). As the rental was not paid within the required 20 days, the lease may not be reinstated pursuant to 30 U.S.C. § 188(c) (1982). Trend Resources Ltd., 64 IBLA 383 (1982); Sun Oil Co., 63 IBLA 26 (1982). Even if appellant had paid the rental within the 20-day period, the Board has long held that failure to receive a courtesy billing notice does not justify the late payment of the rental. Crest Oil & Gas Corp., 72 IBLA 370 (1983); Ruth Eloise Brown, 60 IBLA 328 (1981).

[2] Although reinstatement of the lease at its original rental rate under 30 U.S.C. § 188(c) is not possible, BLM properly considered the applicability of the Federal Oil and Gas Royalty Management Act, P.L. 97-451, 96 Stat. 2447 (enacted Jan. 12, 1983), which authorizes reinstatement of leases where payment of the rental is not made within 20 days of the anniversary date, provided certain conditions are satisfied. Section 401 of the Act amends section 31 of the Mineral Leasing Act by adding provisions codified at 30 U.S.C. § 188(d), (e) (1982). 2/ With respect to leases terminated after January 12, 1983, the statute authorizes reinstatement where

a petition for reinstatement together with the required back rental and royalty accruing from the date of termination is filed on or before the earlier of --

2/ BLM has published proposed regulations to implement these new statutory provisions. 49 FR 4217 (Feb. 3, 1984).

(i) sixty days after the lessee receives from the Secretary notice of termination, whether by return of check or by any other form of actual notice, or

(ii) fifteen months after termination of the lease.

30 U.S.C. § 188(e) (1982).

The statute further provides that reinstatement under 30 U.S.C. § 188(d) shall be made only if certain conditions are met including payment of back rentals and the inclusion in a reinstated noncompetitive lease of a requirement for back and future rentals at a rate of not less than \$5 per acre per year. 30 U.S.C. § 188(e); see Kurt W. Mikat, 82 IBLA 71 (1984). The statute further requires that the lessee of a reinstated lease shall reimburse the Secretary for the administrative costs of reinstating the lease, but not to exceed \$500, and for the cost of publication in the Federal Register of notice of the proposed reinstatement.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

C. Randall Grant, Jr.
Administrative Judge

We concur:

James L. Burski
Administrative Judge

Edward W. Stuebing
Administrative Judge.

